

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

In re the Marriage of:)	1 CA-CV 06-0657A
)	
ANDREW ALEXANDER,)	DEPARTMENT A
)	
Plaintiff/Appellant,)	
)	DECISION ORDER
v.)	(Not for Publication - Rule
)	29, Arizona Rules of Civil
SANDRA WEBB-CAMPBELL,)	Appellate Procedure)
)	
Defendant/Appellee.)	
_____)	FILED 6-8-07

Appeal from the Superior Court in Yavapai County

Cause No. DO 2001-0988

The Honorable Mary Hamm, Judge Pro Tem
The Honorable David L. Mackey, Judge

AFFIRMED

Ellen Seaborne	Flagstaff
Attorney for Petitioner-Appellant	
Kenton D. Jones	Prescott
and Laura Taylor	
Attorneys for Respondent-Appellee	

¶1 Presiding Judge Jon W. Thompson and Judges Patrick Irvine and Lawrence F. Winthrop have considered this appeal. Pursuant to Rule 29, Arizona Rules of Civil Appellate Procedure, we accelerated this appeal, granted the parties extended oral argument, and now issue this decision within three days of argument.

¶2 Andrew Alexander (Alexander) appeals from the trial court's grant of an order of protection to Sandra Webb-Campbell (Webb-

Campbell). For the reasons stated below, we affirm.

¶3 On appeal, Alexander asserts three allegations of error:

1. that the trial court erred as a matter of law in ruling that Alexander had harassed Webb-Campbell;
2. that the trial court erred as a matter of law in finding Alexander violated the harassment statute, A.R.S. § 13-2921 (2006);
3. that the court erred as a matter of law when it found Alexander would commit a future act of domestic violence.

¶4 The order of protection was upheld at four separate hearings. The court took evidence and heard from multiple witnesses, including Officer Arnspiger. After the final hearing, Judge Mackey stated that he did not believe that Webb-Campbell was "forthright with Judge Hamm with respect to what was going on" when the original order was issued and noted that the testimony was in conflict, but said:

Mr. Alexander is overly fixated on Ms. Webb-Campbell's time with Sidney [sic], wants to know what they are doing, when they are doing it, who they are doing it with, and wants to be in control of that through matters that were submitted to the [s]pecial [m]aster. . . . court records indicate he has been doing [it] for a long time, keeping an eye on Ms. Webb-Campbell.

He concluded that, as to stalking, there was no evidence on the record that Alexander was ever told to stop. Judge Mackey found that harassment had occurred and would occur in the future absent an order of protection. He further found reasonable cause to believe an act of domestic violence may occur or has occurred

within the last year. He ordered the order of protection to remain in full force and effect to prohibit personal contact, other than when the parties exchange Sydney. The court clarified that Alexander is not to go somewhere "knowing that Ms. Webb-Campbell is there and get[] into immediate physical proximity of her." The court did not prohibit Alexander from driving or being on specific streets or give specific distances. The order does not preclude Alexander from going anywhere in particular, so long as he does not initiate contact with Webb-Campbell.

¶5 The harassment statute, A.R.S. § 13-2921 (2006), provides in pertinent part:

A. A person commits harassment if, with intent to harass or with knowledge that the person is harassing another person, the person:

1. Anonymously or otherwise communicates or causes a communication with another person by verbal, electronic, mechanical, telegraphic, telephonic or written means in a manner that harasses.
2. Continues to follow another person in or about a public place for no legitimate purpose after being asked to desist.
3. Repeatedly commits an act or acts that harass another person.
4. Surveils or causes another person to surveil a person for no legitimate purpose.

We review the issuance of an order of protection under an abuse of discretion standard and we defer to the trial court in its determinations of credibility. *Ariz. Dep't of Public Safety v. Superior Court*, 190 Ariz. 490, 494, 949 P.2d 983, 987 (App. 1997);

Premier Financial Servs. v. Citibank (Arizona), 185 Ariz. 80, 85, 912 P.2d 1309, 1314 (App. 1995). We find the record could support the trial court's determination that Alexander had surveiled Webb-Campbell and thereby harassed her under the statutory provisions. Because we find at least one basis for sustaining the order of protection, we need not address Alexander's other claims.

¶16 We note, however, that both injunctions against harassment and orders of protection expire after one year. See A.R.S. § 12-1809(J) (2006); A.R.S. § 13-3602(K) (2006). We further note that in seeking any renewal of this order of protection, Webb-Campbell must present the trial court with sufficient evidence of continuing or threatened behavior that meets the statutory provisions.

SEALING OF THE RECORD/STRIKING OF THE OPENING BRIEF

¶17 Webb-Campbell asks that we strike the Opening Brief for failure to comply with the Rules of Civil Appellate Procedure. In our discretion, we decline to do so.

¶18 Webb-Campbell asks that we strike and re-seal the page from Dr. Toma's report included as Exhibit 3 to the Opening Brief. Although we are aware that the trial court's minute entry adopted conclusions from Dr. Toma's report, this Court will err on the side of caution and order the Opening Brief sealed.

ATTORNEYS' FEES AND COSTS

¶19 Both Alexander and Webb-Campbell request attorneys' fees and costs on appeal pursuant to A.R.S. §§ 13-3602(O) (2006), 25-324

(2006) and Rule 31 of the Arizona Rules of Family Law Procedure. Section 25-324 requires us to examine both the financial resources and the reasonableness of the positions of each party. While it appears that husband has the greater financial resources, we do not find husband has taken unreasonable positions in these proceedings. The parties shall bear their own fees and costs on appeal.

CONCLUSION

¶10 For the foregoing reasons, we affirm. It is further ordered sealing the Opening Brief.

JON W. THOMPSON, Presiding Judge

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ANDREW ALEXANDER,)	DEPARTMENT A
)	
Plaintiff/Appellant,)	
)	Yavapai County
v.)	Superior Court
)	Cause No. DO 2001-0988
SANDRA WEBB-CAMPBELL,)	
)	ORDER
Defendant/Appellee.)	
_____)	

The above-entitled matter was duly submitted to the Court.
The Court has this day rendered its memorandum decision.

IT IS ORDERED that the memorandum decision be filed by the Clerk.

IT IS FURTHER ORDERED that a copy of this order together with a copy of the memorandum decision be sent to each party appearing herein or the attorney for such party and to the Honorable David L. Mackey, Judge and The Honorable Mary Hamm, Judge Pro Tem.

DATED this _____ day of _____ , 2007.

JON W. THOMPSON, Presiding Judge